

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DAVONE M. WHITE,)
Petitioner,)
v.) No. 4:20-CV-489 NCC
MICHELE BUCKNER,)
Respondent.)

MEMORANDUM AND ORDER

This matter is before the Court on petitioner's "status report." After review of the record the Court will reopen this stayed action and issue a Case Management Order.

Background

Petitioner, an inmate at South Central Correctional Center ("SCCC"), seeks a writ of habeas corpus. After a jury trial, petitioner was convicted of robbery in the first degree, attempted robbery in the first degree and armed criminal action on February 23, 2016. Petitioner was sentenced to twenty-five (25) years' imprisonment on April 15, 2016. *See State v. White*, No. 14SL-CR10027-01 (St. Louis County Court, 21st Judicial Circuit).

Petitioner filed a direct appeal of his conviction and sentence on April 22, 2016. *See State v. White*, No. ED104326 (Mo. Ct. App. 2016). The Court of Appeals reversed the matter for resentencing on May 16, 2017. Petitioner was resentenced in the trial court on July 13, 2017 to twenty-four (24) years' imprisonment. *See State v. White*, No. 14SL-CR10027-01 (St. Louis County Court, 21st Judicial Circuit).

Petitioner again appealed the matter to the Court of Appeals on September 5, 2017. *State v. White*, No. ED105876 (Mo. Ct. App. 2017). His appointed counsel filed a voluntary dismissal of the appeal on December 4, 2017.

Petitioner filed a post-conviction motion to vacate his sentence pursuant to Mo. Sup. Ct. R. 29.15 on August 21, 2017. *White v. State*, No.17SL-CC03175 (St. Louis County Court, 21st Judicial Circuit). The motion was denied on January 23, 2019. He appealed the denial of his motion to vacate on January 31, 2019. *White v. State*, No. ED107667 (Mo. Ct. App. 2019). Although the Court affirmed the denial of his motion to vacate on February 18, 2020, the Court has not yet issued a mandate in the action.

A review of the post-conviction proceedings on Missouri.Case.Net reveals that on March 9, 2020, petitioner filed a motion to amend or set aside the judgment pursuant to Mo. Sup. Ct. R. 74.06. *White v. State*, No. ED107667 (Mo. Ct. App. 2019). The Court denied petitioner's motion on April 28, 2020. He filed a motion for rehearing or alternatively for reconsideration on April 21, 2020, but this motion was denied as untimely on April 23, 2020. *Id.* He additionally filed a motion to proceed in forma pauperis which was denied on April 29, 2020.

Discussion

On April 9, 2020, the Court ordered petitioner to show cause why this action should not be dismissed as prematurely filed. Petitioner filed a response to the Order to Show Cause on April 23, 2020. In his response, petitioner sought a stay and abeyance of this action until such time as the Missouri Court of Appeals issued the mandate in his post-conviction appeal. On May 7, 2020, the Court granted petitioner's request to stay and abey this action and ordered petitioner to file a status report within forty-five (45) days from the date of that Order informing the Court as to the status of petitioner's post-conviction appeal and whether a mandate had issued.

Petitioner has complied with the Court's Order, filing a status report indicating that the mandate issued in his post-conviction appeal on May 14, 2020, after which time he filed a motion to amend or set aside the judgment which was denied on June 4, 2020.

The Court believes petitioner has properly exhausted his state remedies and will issue a Case Management Order in this habeas action.

Accordingly,

IT IS HEREBY ORDERED that the Clerk of Court shall **REOPEN** this stayed action.

Dated this 22nd day of June, 2020.

/s/ Noelle C. Collins
NOELLE C. COLLINS
UNITED STATES MAGISTRATE JUDGE